

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITIONS NO.187/1999 & 188/1999

The Goa Tourism Development
Corporation Ltd., a Government Company
set up under the Companies Act, 1956,
with office at Trionara Apartments,
1st Floor, New Market, Panaji, Goa.

..... Petitioner.

V/s.

1. Mrs. Sunita C. Palyenkar
(since deceased) represented by :

1a) Shri Rajesh Chandrakant Palyenkar,
(son),

1b) Shri Yogesh Chandrakant Palyenkar,
(son),

Both (1a) and (1b) r/o Hillside
Apartments, Block B, 2nd Floor,
Fontainhas, Panaji, Goa.

1c) Smt. Nutan Anil Alsekar
(married daughter),

1d) Shri Anil Alsekar (husband of
Smt. Nutan A. Alsekar),

Both (1c) and (1d) r/o. Near INS
Mandovi, Verem, Bardez, Goa.

1e) Smt. Natasha Vilas Naik
(married daughter)

1f) Shri Vilas Naik (husband of
Smt. Natasha V. Naik),

Both (1e) and (1f) r/o. Srinivas
Apartments, Dangui Colony,
Mapusa, Bardez, Goa.

2. The Estate Office,
Goa Tourism Development
Corporation Ltd., with Office at
Trionara Apartment., 1st Floor,
New Market, Panaji, Goa.
3. The Addl. District Judge,
Mapusa, North Goa, Mapusa, Goa. Respondents.

Mr. Nitin Sardessai, Advocate for the petitioner.

Respondents No.1(a) to 1(f) served absent.

Advocate V. R. Tamb, Amicus Curiae.

CORAM : A.P. LAVANDE, J.

Date of reserving the judgment :
6th April, 2006.

Date of pronouncing the judgment:
13th April, 2006.

J U D G M E N T :

These two petitions are disposed of by common judgment since they arise out of the proceedings taken against the original respondent- Sunita Palyenkar under the Goa Public Premises (Eviction of Unauthorised Occupants) Act, 1988 (hereinafter, referred to as "the Act") Writ Petition No.187/1999 has been preferred by the petitioner against the Judgment and Order dated 30.3.1999 passed by the Additional District Judge, Mapusa in Civil Appeal No.7/98 filed by the original respondent No.1 herein. Writ Petition No.188/1999 has been preferred

against the Judgment and Order dated 30.3.1988 in Civil Appeal No.8/98 preferred by the original respondent No.1 herein, by which the appeal filed by the original respondent No.1 was allowed by the additional District Judge, Mapusa.

2. Briefly, the facts which are relevant for disposal of the writ petitions are as under :

The deceased respondent No.1 was permitted to occupy Shop No.4 in Tourist Hostel, Panaji (hereinafter, referred to as "the said premises"). The original respondent No.1 was granted the said premises on licence upon payment of monthly consideration of Rs.168.50 and subject to the terms and conditions mentioned in the Agreement dated 6.4.1988. By the said agreement, original respondent No.1 was permitted to occupy the said premises for a period of 3 years beginning from 20.2.1987 to 19.2.1990. On 5.9.1990, the petitioner addressed a notice to original respondent No.1 terminating the agreement with effect from mid-night of 19.10.1990 and called upon the respondent No.1 to vacate the said premises. Since respondent No.1 did not vacate the said premises, the petitioner filed an application for eviction before respondent No.2 from the said premises and also claimed damages. The proceedings were contested by respondent No.1. Respondent No.1, inter alia, contended that she was occupying the said premises as tenant for about 26 years. By order dated 25th June, 1992, respondent

No.2 ordered eviction of respondent No.1 and also granted damages. Against the said order, an appeal was preferred to the District Court, Panaji and the said appeal was allowed and the matter was remanded to respondent No.2. On remand, respondent No.2 passed Order dated 13.9.1994, ordering eviction of the respondent No.1 and also directing payment of damages. Against the said order, respondent No.1 preferred an appeal before the District Court, Panaji which was allowed by Judgment and Order dated 21.7.1997 and the District Court remanded the matter for fresh consideration to respondent No.2. The Judgment and Order passed by the District Court was challenged by the petitioner by filing Writ Petition No. 306/1997 before this Court. By Judgment and Order dated 3.2.1998, this Court party allowed the petition and remanded the matter to respondent No.2 and restricted the remand only to the point whether the permission granted to respondent No.1 was validly terminated or not. Upon remand, respondent No.2 decided the matter in favour of the petitioner and directed respondent No.1 to be evicted and also ordered to pay damages at the rate of Rs.1,000/- per month for a period of three years from 20.1.1990 and thereafter, damages at the rate of Rs.1150/- per month for a period upto 19.10.1996 and further damages at the rate of Rs. 1322/- from 20.10.1996 till eviction. Against the said order, respondent No.2 chose to prefer two separate appeals, one against the order of eviction and the other against the order imposing damages. Both these appeals have

been allowed by Judgments and Orders dated 30.3.1999, passed by the Additional District Judge, Mapusa. By the impugned Judgments, the appellate Court held that the notice of termination issued to respondent No.1 was not in terms of the Transfer of Property Act and, therefore, the respondent No.1 could not be termed as 'unauthorised occupant' and further held that since respondent No.1 was not an unauthorised occupant, there was no question of awarding damages against her. The petitioners have challenged the Judgments and Orders passed in these two appeals by filing the present petitions.

3. During the pendency of these petitions, the original respondent No.1 expired and her legal representatives have been brought on record. Since the legal representatives of respondent No.1 neither appeared nor engaged any Counsel, this Court appointed Advocate V.R. Tamba as an amicus curiae who has rendered able assistance to this Court in the matter.

4. Mr. Sardesai, learned Counsel appearing for the petitioner in both the writ petitions, submitted that the appellate Court has not exercised jurisdiction according to law, but, on the contrary, has given findings in total disregard to the Judgment dated 3.2.1998 passed by this Court in Writ Petition No.306/1997 preferred by the petitioner. The learned Counsel further submitted that the finding given

by the appellate Court that the original respondent No.1 was a tenant holding over and that the notice dated 5.9.1990 issued to respondent No.1 by the petitioner was not a valid notice, is contrary to law. According to the learned Counsel, the original respondent No.1 could not be considered as a tenant holding over and that her possession was that of a Licensee and her licence having been terminated by Notice dated 5.9.90 with effect from mid-night of 20.10.1990, the Appellate Court erred in law, in allowing the appeal on the ground that notice was not a valid notice. The learned Counsel further submitted that the finding of the appellate Court that the respondent No.1 was not an unauthorised occupant of the said premises from 20.10.1990 is contrary to law and, therefore, the impugned judgments and Orders passed by the appellate Court deserves to be quashed and set aside. The learned Counsel submitted that the impugned Judgments clearly disclose error of law apparent on the face of record. Therefore, this is a fit case in which the impugned Judgments and Orders deserve to be quashed and set side in exercise of writ jurisdiction.

5. Mr. Tamba, learned Amicus Curiae submitted that the finding recorded by the appellate Court that the original respondent No.1 was a tenant holding over and that the notice dated 5.9.1990 was not a valid notice under Section 106 of the Transfer of Property Act is contrary to law. According to the learned Amicus Curiae, the

respondent No.1 was a Licensee and his licence having been terminated, after giving a reasonable notice, the appellate Court could to have set aside the order of eviction passed by respondent No.2 against the respondent No.1. Mr. Tamba submitted that since the respondent No. 1 was a Licensee in respect of the said premises covered by the Act, the question of extending benefit of Section 106 of the Transfer of Property Act does not arise at all. He further submitted that the impugned Judgment to the extent it holds that the respondent No.1 is not an unauthorised occupant of the said premises, is contrary to law. In support of his submission, Mr. Tamba relied upon the Judgment of the Apex Court in **Jiwan Dass vs. Life Insurance Corporation of India and another.**, 1994 Supp (3) SCC 694.

6. I have considered the submissions made by the learned Counsel for the petitioner as well as the learned Amicus Curiae. The appellate Court while deciding the appeals preferred by respondent No.1 against the order of eviction and awarding damages passed by respondent No.2 was bound to pass an order in terms of the Judgment passed by this Court in Writ Petition No.306/1997. In paragraph 8 of the said Judgment, this Court observed as follows :

“ In the result the petition partly succeeds. The impugned order is accordingly modified to the extent that remand to the respondent No.3 for further arguments in the matter is restricted to

the point to find out whether the termination of permission granted to the respondent no.1 was validly done or not. The respondent no.1 shall not be entitled to raise any other issue before the respondent No.3. Except this modification the order of the appellate authority does not warrant interference. The respondent no.3 shall complete the enquiry as expeditiously as possible and in any case within four months from today. Rule accordingly. There shall be no order as to costs.”

In view of the observations made in paragraph 8 as mentioned above, the respondent No. 2 and the appellate Court were required to find out whether the termination of permission granted to respondent No.1 was validly done or not. Respondent No.2 recorded a finding in favour of the petitioner holding that respondent No.1 was a Licensee. The said finding has been reversed by the appellate Court on the ground that the respondent No.1 was a tenant holding over and, therefore, the notice dated 5.9.90 was not in compliance with Section 106 of the Transfer of Property Act which requires that in month to month tenancy, the landlord must give 15 days clear notice ending with the month of tenancy. The appellate Court held that although the notice period was more than 15 days, it was not ending with the month of tenancy.

7. The question which arises for consideration before this Court

is whether the notice was validly given terminating the permission given to respondent No.1. I find considerable merit in the submission of Mr. Sardessai that the finding of the appellate Court that respondent No.1 was a tenant holding over is a finding contrary to law and, therefore, cannot be entertained. Admittedly, the premises are covered by the Act. The Agreement dated 26th April, 1988 entered into between the petitioner and the respondent No.1 spells out that the permission was given to respondent No.1 as Licensee. Therefore, in my opinion, the appellate Court was not justified in holding that respondent No.1 was a tenant holding over and further that Notice dated 5.9.90 was not a valid notice terminating the permission. The finding of the respondent No. 2 that the permission granted to respondent No.1 was validly terminated by notice dated 5.9.90 can neither be said to be perverse nor contrary to law and, as such, the appellate Court, in my opinion, exercised jurisdiction illegally in holding that respondent No.1 was a tenant holding over. Once it is held that respondent No.1 was not a tenant holding over, the question of giving notice under the Transfer of Property Act does not arise at all and the respondent No.1 being the Licensee who was put in possession under the Act had no right to continue to be in possession of the said premises after her licence was validly terminated. That being the position, the Judgments passed by the appellate Court cannot be sustained. The Judgment of the appellate Court in Civil Appeal No.7/98, in so far as it allows the appeal filed by respondent No.1,

deserves to be quashed and set aside, thereby maintaining the order of eviction passed by the respondent No.3. In so far as the Judgment passed in Civil Appeal No.8/98 is concerned, the same deserves to be quashed and set aside. However, since the appellate Court held that respondent No.1 was not an unauthorised occupant and, as such, he did not deal with the challenge to damages on merits, it is just and proper that the matter is remanded to the appellate Court to decide the appeal on merits, in accordance with law. In my opinion, since no finding on merits has been given by the appellate Court, it will not be a proper exercise by this Court to go into the merits, in so far as assessment of damages done by respondent No.3 is concerned.

8. In the result, therefore, Writ Petition No. 187/1999 is allowed. The impugned Judgment and Order dated 30.3.1999 passed in Civil Appeal No.7/98 by the Additional District Judge, Mapusa is quashed and set aside and the order of eviction passed by respondent No.2 is maintained. As regards Writ Petition No.188/99 is concerned, the impugned Order dated 30.3.1999 is quashed and set aside and the matter is remanded to the appellate Court to decide the appeal on merits in accordance with law. The appellate Court shall permit the legal representatives of respondent No.1 who is appellant in Civil Appeal No.8/98 to be brought on record in the said appeal.

Considering the fact that the proceedings against respondent No.1 were initiated in the year 1990, the appellate Court shall dispose of the Civil Appeal No.8/98 as expeditiously as possible and in any case before 31st December, 2006. Having regard to the fact that the legal representatives of the original respondent No.1 have chosen not to put in appearance, there shall be no order as to costs. The parties shall appear before the appellate Court on 7th June, 2006 at 10.00 a.m. for further directions.

A.P. LAVANDE, J.

ssm.